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NO. 59468-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY J. ERICKSON,

Appellant.

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STATE OF WASHINGTON
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BRIEF OF RESPONDENT

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I. ISSUES

1. Did the trial court err when it determined the defendant was validly arrested on a warrant from Lynnwood Municipal Court where the municipal court had previously found probable cause for the charged offense and the defendant had been convicted of that offense?

2. Did the trial court err when it refused to suppress evidence found in a search of the defendant's person pursuant to his arrest on the Lynnwood Municipal Court warrant?

II. STATEMENT OF THE CASE

The defendant, Anthony Erickson, was charged in Lynnwood Municipal Court with one count of Assault 4 DV on August 5, 2005. On that date the defendant appeared in custody with his attorney for arraignment. The Court found probable cause existed for the charge, and set bail pending trial. 1 CP 60.

The defendant was ultimately convicted of the charge. He was sentenced to 365 days in custody with 335 days suspended. The remaining jail time was suspended on certain conditions. 1 CP 60-61. On July 28, 2006 the Lynnwood Municipal probation department filed a violation report alleging the defendant had violated the conditions of his probation by failing to report to the

probation department on his release from confinement and failing to actively enroll in treatment by March 20, 2006. 1 CP 52. A summons was sent to the defendant for a violation hearing scheduled for October 6, 2006. The summons was returned as the defendant had moved and left no forwarding address. The judge then authorized issuance of a bench warrant. 1 CP 55, 61.

Officer Valentine of the Lynnwood Police Department was on patrol at about 1:30 a.m. on November 16, 2006. The defendant was walking on Highway 99 in Lynnwood when the officer noticed the defendant was behaving in an animated fashion consistent with drug use. The defendant waived the officer down in that same animated manner. Officer Valentine obtained the defendant's identifying information, and then left the defendant. A little later Officer Valentine ran the defendant's information on his computer. The officer then learned about the Lynnwood Municipal bench warrant. Officer Valentine re-contacted the defendant and arrested him on the outstanding warrant. 12-21-06 RP 6-12.

Officer Valentine conducted a search of the defendant incident to arrest. The officer found items that he recognized as drug paraphernalia. 12-21-06 RP 13. The defendant was transported to the jail. While conducting the booking process

Officer Hodgins found cocaine on the defendant's person. 1 CP 40; 12-21-06 RP 14.

The defendant was charged with one count of Possession of a Controlled Substance, Cocaine. 1 CP 123. He challenged the search on the basis that the initial contact was an investigatory detention which was not supported by an articulable suspicion of criminal activity and the warrant from the municipal court was invalid. 12-21-06 RP 49-54; 1 CP 67-73, 107-111. The trial court denied the motion. 12-21-06 RP 67-71; 1 CP 29-31, 65-66.

The defendant stipulated to a bench trial on agreed documentary evidence and was convicted as charged. 1 CP 4, 32-43.

III. ARGUMENT

A. THE WARRANT FOR THE DEFENDANT'S ARREST WAS VALIDLY ISSUED.

The court has the authority to issue a warrant for a person who has been summonsed to appear before court and who fails to appear, or if delivery of the summons cannot be effected in a reasonable amount of time. CrRLJ 2.2(b)(5). A court issuing a warrant for the defendant's arrest must first "determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant." CrRLJ 2.2(a)(2)

Probable cause exists where the facts and circumstances would lead a person of reasonable caution to believe that an offense has been committed. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996).

Here the probable cause requirement was met on the record before the trial court issued a warrant for the defendant's arrest. When the defendant was originally charged the municipal court found probable cause to believe the defendant had committed an Assault 4th Degree. The first entry on the docket is August 5, 2005. The entry reads in part

STEPHEN E. MOORE, PRESIDING, PA JAMES
ZACHOR FOR THE CITY DEF PRESENT IN
CUSTODY WITH PD JAMES FELDMAN,
ACKNOWLEDGEMENT OF ADVICE OF RIGHTS,
COURT FINDS PC...

1 CP 60

On August 17, 2005 the docket indicates the defendant stipulated to fact sufficient to enter a finding of guilty. A finding of guilty entered at that time. Thus, the court determined beyond a reasonable doubt that the offense had been committed. The requirements of CrRLJ 2.2(a)(2) were therefore satisfied before the court authorized issuance of the warrant for the alleged probation violation on October 2, 2006.

The defendant claims the warrant was not valid because the court did not find probable cause for the alleged probation violations before issuing the warrant for his failure to appear at the violation hearing. He relies on State v. Walker, 101 Wn. App. 1, 999 P.2d 1296, review denied, 142 Wn.2d 1013, 16 P.3d 265 (2000) and State v. Parks, 136 Wn. App. 232, 148 P.3d 1098 (2006). Each case was decided based on facts that are significantly different than those presented here. For that reason they do not support the defendant's argument.

In Walker the court decided whether a municipal court clerk could issue a warrant of arrest without judicial participation and without an authorizing provision of law. Walker, 101 Wn. App. at 3. The court determined no statute, ordinance, or court rule gave a court clerk the authority to issue a bench warrant. Walker, 101 Wn. App. at 7-8.

Unlike Walker, the judge, and not the court clerk, authorized issuance of the warrant in the defendant's case. The court docket entry for October 2, 2006 clearly stated Judge Kristen Anderson ordered the bench warrant when the defendant failed to appear. 1 CP 62-63. The actual warrant was signed by Judge Kristen Anderson, pro tem. Ex. 1. Because CrRLJ 2.2 and RAP 2.5 gives

the judge the authority to issue a warrant, Walker does not support the defendant's argument.

Similarly, the facts in Parks are completely different than the facts here. Parks considered the validity of a bench warrant issued pre-conviction. Unlike in the defendant's case, the municipal court that issued a bench warrant for Parks' arrest had not made a determination that probable cause for the underlying offense existed at any time. Because no probable cause determination had been made, the warrant was not constitutionally valid. Parks, 136 Wn. App. at 238.

Here the municipal court had already made a probable cause determination before the warrant was issued. Under these circumstances this Court agreed no further probable cause determination was required. Parks, 136 Wn. App. at 237-38. Parks does not support the defendant's argument that the court was required to make a separate determination that probable cause existed to believe the defendant violated the conditions of his probation.

Nor is there anything in CrRLJ 2.2 that suggests that the court needs to make a separate probable cause determination prior to issuing a warrant for a probation violation. When construing a

court rule terms are given their plain and common meaning. State v. Johnson, 21 Wn. App. 919, 921, 587 P.2d 189 (1978). CrRLJ 2.2(a)(2) requires the court to determine that there is “probable cause to believe that the defendant has committed the crime alleged before issuing the warrant.” (emphasis added).

A crime is not the same as a probation violation. A defendant has different rights and faces different punishment depending on whether he is charged with a crime or a violation of probation after he has been found guilty of that crime. Defendants who are accused of violating the conditions of their probation are not entitled to the same due process rights as one who stands accused of committing the crime. Seattle v. Lea, 56 Wn. App. 859, 860, 786 P.2d 798 (1990). The penalty for Assault 4 may be up to 365 days in jail. LMC 10.02.010, 10.02.080, RCW 9A.36.041. The penalty for a probation violation after conviction for that crime depends on the amount of time the court imposed at sentencing, and the remaining suspended time that the defendant has not yet served on that sentence. RCW 3.50.340.

Because “a crime” and “a probation violation” have different meanings, and CrRLJ 2.2(a)(2) limits the requirement for a probable cause determination to “the crime”, such determination

was not required for an alleged probation violation. Thus, the court's earlier probable cause determination for the charge of Assault 4 was sufficient to support the later warrant issued for the defendant's failure to appear for his probation violation hearing.

The defendant also complains that the record is inadequate to meaningfully review the trial court's probable cause determination citing Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 43 L.Ed.2d 54 (1974). Pugh considered whether a pretrial detainee was entitled to a probable cause determination by a judicial officer and if so whether the Constitution required an adversary hearing. The Court held a judicial officer must make a probable cause determination as a prerequisite to pretrial detention, but that an adversarial hearing was not required. It left to the various States to determine the procedure to be used in order to satisfy this Constitutional requirement. Pugh, 420 U.S. at 117, 120-125. Nothing in Pugh suggests the manner in which the Lynnwood Municipal Court recorded its probable cause determination was Constitutionally inadequate. Additionally, Pugh is particularly impertinent in a case such as this where the defendant was convicted on proof beyond a reasonable doubt prior to the warrant being issued.

B. THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED IN A SEARCH INCIDENT TO ARREST ON THE LAWFULLY ISSUED BENCH WARRANT WAS PROPERLY DENIED.

"No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Washington Constitution, Article 1, section 7. A court rule may supply the "authority of law" for issuance of a warrant. State v. Walker, 101 Wn. App. 1, 6, 999 P.2d 1296, review denied, 142 Wn.2d 1013, 16 P.3d 1265 (2000).

CrRLJ 2.2(b)(5) permits the court to issue a warrant of arrest for the defendant if he fails to appear in response to a summons, or if delivery of the summons is not effected within a reasonable time. Here, prior to the issuance of the warrant the court had made a probable cause determination in compliance with CrRLJ 2.2(a)(2). The Court was not able to effect delivery of the summons within reasonable time because it was returned to the court marked with the notation that the defendant had moved and left no forwarding address. 1 CP 62. Thus, the warrant was lawfully issued.

The officer's search incident to the arrest revealed drug paraphernalia. 1 CP 37. A jail officer found the cocaine on the defendant's person during a booking search. 1 CP 41. A search pursuant to a lawful arrest and routine inventory searches are

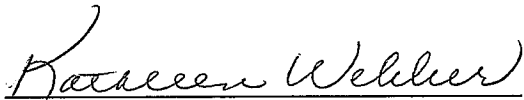
recognized exceptions to the requirement for a search warrant. State v. Smith, 76 Wn. App. 9, 13, 882 P.2d 190 (1994). Because the defendant was lawfully arrested pursuant to a valid bench warrant, and the search was conducted as part of the booking process, the evidence was properly admissible. The trial court did not err when it denied the defendant's motion to suppress the evidence.

IV. CONCLUSION

For the forgoing reasons, the State requests the Court affirm the defendant's conviction.

Respectfully submitted on August 29, 2007.

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